

sum of such redetermined rates for stumpage and sale area betterment shall not be less than the base rates in the published notice of the proposed sale.

(e) May modify and revise existing cooperative agreements entered into under said act after taking appropriate action.

§ 223.118 Appeal process for small business timber sale set-aside program share recomputations.

(a) *Decisions subject to appeal.* The rules of this section govern appeal of decisions about structural, special, market change, or the scheduled five-year recomputations of the small business share of timber sales. Only those timber sale purchasers who have submitted written comments to the Responsible Official on the draft recomputed share decision, or their representatives, are eligible to appeal a decision.

(b) *Manner of giving notice—(1) Predecisional notice and comment.* Qualifying timber sale purchasers that may be affected by recomputations shall be given 30 days for predecisional review and comment on any draft decision to reallocate shares, including the data used in making the proposed recomputation decision.

(2) *Notice of Decision.* Upon close of the 30-day review period, the Responsible Official shall consider any comments reviewed. Within 15 days following the end of the comment period, the Responsible Official shall make the decision on the small business shares and shall give prompt written notice to all parties on the national forest timber sale bidders list for the affected area. The notice shall identify the name of the Appeal Deciding Officer to whom an appeal of the decision may be filed, the address, the date by which an appeal must be filed, and where the purchaser may obtain the appeal procedure and requirements.

(c) *Who may appeal.* Only timber sale purchasers affected by recomputations of the small business share of timber sales, or their representatives, who have submitted predecisional comments pursuant to paragraph (b)(1) of this section may appeal recomputation decisions under this section. Intervenor

nors are not allowed in appeals under this section.

(d) *Level of appeal.* Only one level of review is available for appeal of decisions pertaining to recomputations under the Small Business Timber Set-Aside Program. The Appeal Deciding Officer is the official one level above the level of the Responsible Official who made the recomputation of shares decision. The Responsible Official is normally the Forest Supervisor; thus, the Appeal Deciding Officer is normally the Regional Forester. However, when the Regional Forester makes recomputation decisions, the Appeal Deciding Officer is the Chief or such officer at the National headquarters level as the Chief may designate.

(e) *Filing procedures.* In order to file an appeal under this section, an appellant must file a notice of appeal, as specified in the notice of decision, with the Appeal Deciding Officer within 20 days of the date on the notice of the decision. This date shall be specified in the notice of decision given pursuant to paragraph (b)(2) of this section.

(f) *Content of notice of appeal.* (1) It is the responsibility of the appellant to provide sufficient narrative evidence and argument to show why a recomputation decision by the Responsible Official should be reversed or changed.

(2) An appellant must include the following information in a notice of appeal:

(i) The appellant's name, mailing address, and daytime telephone number;

(ii) The title or type of recomputation decision involved, the date of the decision, and the name of the Responsible Official;

(iii) A brief description and date of the decision being appealed;

(iv) A statement of how the appellant is adversely affected by the decision being appealed;

(v) A statement of the facts in dispute in the issue(s) raised by the appeal;

(vi) Specific references to any law, regulation, or policy that the appellant believes to have been violated and the basis for such as allegation;

(vii) A statement as to whether and how the appellant has tried to resolve with the Responsible Official the

issue(s) being appealed, including evidence of submission of written comments at the predecisional stage as provided by paragraph (a) of this section, the date of any discussion, and the outcome of that meeting or contact; and

(viii) A statement of the relief the appellant seeks.

(g) *Time periods and timeliness.* (1) All time periods applicable to this section will begin on the first day following a decision or action related to the appeal.

(2) Time periods applicable to this section are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is automatically extended to the end of the next Federal working day.

(3) It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks on a mailed appeal or the time and date imprint on a facsimile appeal will be considered evidence of timely filing. Where postmarks or facsimile imprints are illegible, the Appeal Deciding Officer shall rule on the timeliness of the notice of appeal.

(4) Time for filing a notice of appeal is not extendable.

(h) *Dismissal without decision.* The Appeal Deciding Officer shall dismiss an appeal and close the record without a decision in any of the following circumstances:

(1) The appellant is not on the timber sale bidders list for the area affected by the recomputation decision;

(2) Appellant's notice of appeal is not filed within the required time period; or

(3) The appellant did not submit written comments on the proposed decision of the new recomputed shares as required by paragraph (c) of this section.

(i) *Appeal record.* The appeal record consists of the written decision being appealed, any predecisional comments received, any other supporting data used to make the decision, the notice of appeal, and if prepared, a responsive statement by the Responsible Official

which addresses the issues raised in the notice of appeal. The Responsible Official must forward the record within 7 days of the date the notice of appeal is received. A copy of the appeal record will be simultaneously submitted to the appellant.

(j) *Appeal decision.* The Appeal Deciding Officer shall review the decision and appeal record and issue a written appeal decision to the parties within 30 days of the close of the appeal period. The Appeal Officer may affirm or reverse the Responsible Official's decision, in whole or in part. There is no extension of the time period for the appeal decision. If the decision is not rendered within the required 30 days, the existing decision is automatically affirmed. The Appeal Deciding Officer's decision or the failure of the Appeal Deciding Officer to decide within the required 30 days constitutes the final administrative decision of the Department of Agriculture.

(k) *Implementation of decisions during pendency of appeal.* Recomputation of shares arising from a scheduled five-year recomputation are effective on April 1 following the end of the five-year period being considered. If an appeal that may affect the shares for the next five-year period is not resolved by the April 1 date, the share decision announced by the Responsible Official shall be implemented. If an appeal decision results in a change in the shares, the revised total share of the Small Business Timber Sale Set-Aside Program shall be accomplished during the remaining portion of the five-year period.

(l) *Timber sale set-aside policy changes.* Timber purchasers shall receive an opportunity, in accordance with all applicable laws and regulations, to review and comment on significant changes in the Small Business Timber Sale Set-Aside program or policy prior to adoption and implementation.

[62 FR 13829, Mar. 24, 1997]

EFFECTIVE DATE NOTE: At 62 FR 13829, Mar. 24, 1997, § 223.118 was added. Paragraph (f) of this section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart C—Suspension and Debarment of Timber Purchasers

SOURCE: 52 FR 43329, Nov. 12, 1987, unless otherwise noted.

§ 223.130 Scope.

(a) This subpart prescribes policies and procedures governing the debarment and suspension of purchasers of National Forest System timber. This subpart further prescribes policies and procedures governing those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*).

(b) It provides for the listing of debarred and suspended purchasers.

(c) It sets forth the causes and procedures for debarment and suspension and for determining the scope, duration, and treatment to be accorded to purchasers listed as debarred or suspended.

[52 FR 43329, Nov. 12, 1987, as amended at 60 FR 46921, Sept. 8, 1995]

§ 223.131 Applicability.

These regulations apply to purchasers of National Forest System timber as well as to those persons who violate the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*). These regulations do not apply to Forest Service procurement contracts which are governed by regulations at 41 CFR 4-1.6.

[60 FR 46921, Sept. 8, 1995]

§ 223.132 Policy.

(a) The Forest Service shall solicit and consider timber sale bids from and award contracts only to responsible business concerns and individuals. Debarment and suspension by the Forest Service are discretionary actions that, taken in accordance with these regulations, are appropriate means to effectuate this policy.

(b) Debarment and suspension shall be imposed only for the causes and in accordance with the procedures set forth in this subpart. The serious nature of debarment and suspension requires that these actions be imposed only in the public interest, for the Government's protection, and not for the purpose of punishment.

(c) Debarment and suspension actions taken under this subpart shall be based on the administrative record, including any submissions and argument made by the purchaser or named affiliate in accordance with this subpart, and shall be limited in scope and duration to that necessary to protect the Government's interest.

§ 223.133 Definitions.

As used in this subpart, the following terms shall have the meanings set forth below:

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliates are business concerns or persons, whose relationship entails the following:

(a) Either party directly or indirectly controls or has the power to control the other; or

(b) A third party directly or indirectly controls or has the power to control both. In determining whether affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, common facilities, and contractual relationships. Further guidelines to be used in determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

Control means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of an individual or business concern, whether through ownership of voting securities, through one or more intermediary individuals or business concerns, or otherwise.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

Debarment means action taken by a debarring official under §§ 223.136 through 223.140 to exclude a purchaser from Forest Service timber sale contracts for a reasonable, specified period of time. A purchaser so excluded is